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May 19, 2008

VIA FEDERAL EXPRESS

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings
MAY 20 2008
Part of
Public Record



Re: **Docket No. AB-167 (Sub-No. 1004N)**
Conrail Abandonment of the Snow Shoe Industrial Track
in Centre and Clearfield Counties, Pennsylvania

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Petition to Partially Vacate Certificate of Interim Trail Use or Abandonment**, dated May 19, 2008. A diskette containing the text of the Petition in MS Word 2003 format also is enclosed.

An extra copy of the Petition and of this transmittal letter are included as well. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Ronald A. Lane
Attorney for R.J. Corman Railroad Company/
Pennsylvania Lines Inc.

RAL:tjl

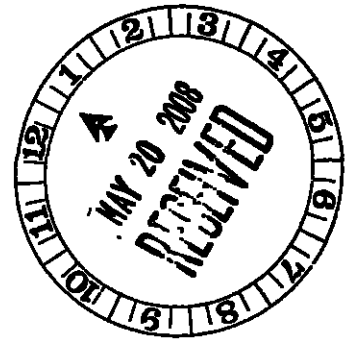
Enclosures

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-167 (SUB-NO. 1004N)

CONRAIL ABANDONMENT OF THE
SNOW SHOE INDUSTRIAL TRACK
IN CENTRE AND CLEARFIELD COUNTIES, PA



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**PETITION TO PARTIALLY VACATE CERTIFICATE
OF INTERIM TRAIL USE OR ABANDONMENT**

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**ATTORNEYS FOR R.J. CORMAN RAILROAD
COMPANY/PENNSYLVANIA LINES INC.**

Dated: May 19, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-167 (SUB-NO. 1004N)

CONRAIL ABANDONMENT OF THE
SNOW SHOE INDUSTRIAL TRACK
IN CENTRE AND CLEARFIELD COUNTIES, PA

**PETITION TO PARTIALLY VACATE CERTIFICATE
OF INTERIM TRAIL USE OR ABANDONMENT**

Pursuant to 49 C.F.R. § 1152.29(c)(2) and *N&W -- Aban. -- St. Marys & Minster in Auglaize County, OH*, 9 I.C.C.2d 1015, 1016 n.3 (1993), R.J. Corman Railroad Company/Pennsylvania Lines Inc. ("RJCP"), as successor to Consolidated Rail Corporation ("Conrail"), hereby petitions the Board to vacate a portion of the Certificate of Interim Trail Use or Abandonment ("CITU") issued in *Conrail Abandonment of the Snow Shoe Industrial Track in Centre and Clearfield Counties, PA*, Docket No. AB-167 (Sub-No. 1004N) (ICC served November 5, 1993) and attached hereto as Exhibit 1. The CITU covers a 19-mile former Conrail line in Clearfield and Centre Counties, Pennsylvania (the "Snow Shoe Industrial Track") which is currently railbanked and used on an interim basis by the Headwaters Charitable Trust ("HCT") as a recreational trail. RJCP seeks vacation of the CITU only with respect to the portion of the Snow Shoe Industrial Track from Milepost 64.5 near Winburne to Milepost 55.2 near Gorton (the "Eastern Segment"¹), over which RCJP intends to restore rail service.

¹ This portion of the former Snow Shoe Industrial Track is denominated the "Eastern Segment" here because, as described further below, it is the eastern portion of a longer line that RJCP seeks to reactivate. The "Western Segment" is the principal subject of the construction and operation petition being filed concurrently herewith in Finance Docket No. 35116, *R.J. Corman Railroad Company/Pennsylvania Lines Inc. -- Construction and Operation Exemption -- Clearfield County, PA*.

This proceeding is related to Finance Docket No. 35143, *R.J. Corman Railroad Company/Pennsylvania Lines Inc. -- Acquisition and Operation Exemption -- Line of Norfolk Southern Railway Company*, in which RJCP has concurrently filed a notice of exemption pursuant to 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41 to acquire the residual common carrier obligation and right to resume rail service on the Snow Shoe Industrial Track held by Norfolk Southern Railway Company ("NS"), Conrail's current successor with respect to such rights. It also is related to Finance Docket No. 35116, *R.J. Corman Railroad Company/Pennsylvania Lines Inc. -- Construction and Operation Exemption -- Clearfield County, PA*, in which RJCP seeks an exemption to reconstruct and operate the "Western Segment," approximately 10.3 miles of former Conrail right-of-way from Wallaceton Junction to Winburne, Pennsylvania abandoned pursuant to *Consolidated Rail Corporation -- Abandonment Exemption -- In Clearfield and Centre Counties, PA*, Docket No. AB-167 (Sub-No. 1146X) (ICC served September 8, 1995). The Western Segment connects at Wallaceton Junction with RJCP's existing rail line. Together, the Eastern and Western Segments will be operated by RJCP as the Beech Creek Branch Line. The lines in question are shown in Exhibit 2.

A copy of this Petition has been served on NS and HCT. NS has consented to the relief sought herein.

DISCUSSION

In 1990 Conrail was authorized to abandon its Snow Shoe Industrial Track,² extending between Milepost 64.5 in the vicinity of Winburne, Pennsylvania and Milepost 45.5

² This denomination is the one used by Conrail in the underlying abandonment proceeding. The Snow Shoe Industrial Track is shown on Exhibit 2 in green, and is to be distinguished from the portion of the Snow Shoe Industrial Track that is to be reactivated by RJCP. The portion to be reactivated is denominated the "Eastern Segment" of the reactivation project and is shown in orange on Exhibit 2.

near Gillintown, Pennsylvania, a distance of approximately 19 miles.³ *Conrail Abandonment of the Snow Shoe Industrial Track in Centre and Clearfield Counties, PA*, Docket No. AB-167 (Sub-No. 1004N) (ICC served February 15, 1990). By decision and certificate of interim trail use or abandonment served on November 5, 1993, the effective date for Conrail's abandonment of the Snow Shoe Industrial Track was postponed to allow Conrail and HCT to negotiate a rail-banking and interim trail use agreement under the National Trails System Act, 16 U.S.C. §1247(d). Such an agreement was subsequently reached between Conrail and HCT for the entire Snow Shoe Industrial Track right-of-way. As required by 16 U.S.C. §1247(d) and 49 C.F.R. §1152.29(d)(2), such trail use is subject to future restoration of rail service.

Recently, a demand for rail service has developed on the Snow Shoe Industrial Track at a point that is currently being used as a trail by HCT.⁴ NS and RJCP have entered into an agreement whereby NS will convey its⁵ residual common carrier rights and obligations on the

³ The exact terminus of the railbanked right-of-way at Milepost 64.5 is 1100+ feet from the northwest side of the bridge over Black Bear Run at Engineer Station 336+940±, as set forth on Map Sheet 20 of the Conrail Deed dated 24 September 1993 conveying interim trail use of the rail-banked line to Headwater Charitable Trust.

⁴ Resource Recovery, LLC ("Resource Recovery") is presently developing a quarry, landfill and industrial park near Gorton, Pennsylvania, at approximately Milepost 55.2, encompassing 2443.78 acres of land that was previously strip mined. As more fully set forth in the petition for exemption being concurrently filed herewith in Finance Docket No. 35116, that facility will require rail service to transport sand and stone, trash and other materials to and from the site. The landfill will be fully permitted by the Pennsylvania Department of Environmental Protection and the U.S. Army Corps of Engineers. RJCP will not engage in any transloading or unloading activity; RJCP will simply deliver trains to Resource Recovery, the permitted operator of the landfill, and Resource Recovery will unload and process such materials pursuant to its permit. Because the landfill will be fully permitted, neither Resource Recovery nor RJCP will seek to preempt the application of any local public health, safety or environmental laws or regulations.

⁵ On August 27, 2004, NS obtained all of Conrail's rights with respect to the Snow Show Industrial Track. *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating*

Snow Shoe Industrial Track, including its right to reinstitute rail service on the line, to RJCP. Pursuant to the notice of exemption filed concurrently herewith in Finance Docket No. 35143, RCJP will acquire NS/Conrail's right to reinstate rail service over the entire Snow Shoe Industrial Track from Winburne (Milepost 64.5) to Gillintown (Milepost 45.5). However, the instant petition to vacate applies only to the portion of the line from Milepost 64.5 near Winburne to Milepost 55.2 at the Resource Recovery facilities at Gorton Road near Gorton, Pennsylvania. The balance of the line, between Milepost 55.2 at Gorton Road and Milepost 45.5 near Gillintown, is not affected and should remain rail-banked by HCT.

The Board has explained that:

[A]n interim trail use arrangement is subject to being cut off at any time by the reinstitution of rail service. If and when the railroad wishes to restore rail service on all or part of the property, it has the right to do so, and the trail user must step aside. 16 U.S.C. 1247(d); 49 C.F.R. 1152.29(d)(2)-(3).

Georgia Great Southern -- Abandon. & Discontin. of Service -- GA, 6 S.T.B. 902, 906 (2003). The agency has expressly recognized that, while not specifically referenced in 49 C.F.R. § 1152.29(c)(2), the abandoning carrier⁶ may request vacation of a CITU. *N&W -- Aban. -- St. Marys and Minster in Auglaize County, OH*, 9 I.C.C.2d 1015, 1016 n.3 (1993); *see also, e.g., Owensville Terminal Company, Inc. -- Abandonment Exemption -- In Edwards and White Counties, IL and Gibson and Posey Counties, IN*, Docket No. AB-477 (Sub-No. 3X) (STB served September 20, 2005). Accordingly, RJCP hereby requests that the Board vacate the

Leases/Agreement s-- Conrail Inc. and Consolidated Rail Corporation, Finance Docket No. 33388 (Sub-No.94) (STB served November 7, 2003).

⁶ Upon completion of the transaction proposed in Finance Docket No. 35143 (notice of exemption filed concurrently herewith), RCJP will be Conrail's successor-in-interest with respect to the Snow Shoe Industrial Track and is properly considered the "abandoning carrier" of the line.

portion of the CITU in this docket covering the Eastern Segment, *i.e.*, from Milepost 64.5 near Winburne to Milepost 55.2 near Gorton.⁷

For the Board's convenience, a copy of RJCP's notice to HCT terminating the relevant portion of the Trails Agreement is attached as Exhibit 3. This Petition is being served on NS and HCT.

WHEREFORE, R.J. Corman Railroad Company/Pennsylvania Lines Inc. requests that the Board issue an order vacating the CITU with respect to the portion of the former Conrail Snow Shoe Industrial Track between Milepost 64.5 near Winburne, Pennsylvania and Milepost 55.2 near Gorton, Pennsylvania.

Respectfully submitted,

By: 

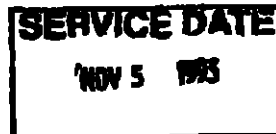
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**ATTORNEYS FOR R.J. CORMAN RAILROAD
COMPANY/PENNSYLVANIA LINES INC.**

Dated: May 19, 2008

⁷ Issuance and vacation of a CITU/NITU is a ministerial function. The Board does not determine whether a trail user is entitled to compensation upon vacation of a CITU/NITU inasmuch as Congress intended to leave compensation matters to the parties in the trail use agreements. *Georgia Great Southwestern*, 6 S.T.B. at 908, citing *Rail Abandonments -- Supplemental Trail Act Procedures*, 4 I.C.C.2d 152, 156 (1987). No authority or exemption is required for RJCP to relay the trackage on the Eastern Segment. *E.g.*, *Georgia Great Southern*, 4 S.T.B. at 906; *Iowa Power - Const. Exempt. -- Council Bluffs, IA*, 8 I.C.C.2d 858, 866 n.12 (1990).

DO



**INTERSTATE COMMERCE COMMISSION
DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT**

Docket No. AB-167 (Sub-No. 1004N)

**CONRAIL ABANDONMENT OF THE SNOW SHOE INDUSTRIAL TRACK
IN CENTRE AND CLEARFIELD COUNTIES, PA**

Decided: November 2, 1993

By decision served February 15, 1990, Consolidated Rail Corporation (Conrail) was authorized under section 308 of the Regional Rail Reorganization Act of 1973 to abandon the following 19.0-mile line of railroad, known as the Snow Shoe Industrial Track in Centre and Clearfield Counties, PA:

Beginning at a point near Winburne, approximately 1,100 feet northwest of the northwest side of US bridge number 64.23 over Black Bear Run, at approximately milepost 64.5, and extending to the end of the line at Snow Shoe, at approximately milepost 43.5.

On August 2, 1993, the Headwaters Charitable Trust (HCT) petitioned to reopen the proceeding for the purpose of issuing a Certificate of Interim Trail Use or Abandonment (CITU). HCT states that Conrail has not consummated abandonment of the line and that, although a final agreement has not been signed, Conrail is willing to negotiate a transfer of the line to HCT for interim trail use and rail banking pursuant to the Trails Act.¹ In its reply filed August 5, 1993, Conrail confirmed HCT's assertions and supported the request for reopening and issuance of a CITU.

Two submissions respectively filed October 4 and 11, 1993, C & K Coal Company and Clair L. Taxman² oppose the planned trail use over the right-of-way. These trail opponents are concerned about trespassers vandalizing and littering their adjoining property and the potential liability for persons injured along the trail. The coal company also argues that a trail will increase opportunities for illegal timbering on its land.

Because Conrail's abandonment has not been consummated, the Commission continues to have jurisdiction over the line. Under the National Trails System Act (16 U.S.C. 1261) and our implementing rules, if a prospective trail user requests a trail condition and the carrier indicates its willingness to negotiate a trail arrangement, the Commission in issuing a Certificate of Interim Trail Use or Abandonment (CITU) functions in a strictly ministerial role. Because we do not analyze, approve, or set the terms for the interim trail arrangement,³ we cannot deny HCT's trail request based on potential problems stemming from trail use.

Trail opponents' concerns are a matter within the laws and police power of the State and local governments in which the trail is located. It is the Commission's policy that trails must be maintained according to applicable land use plans, zoning

¹ HCT also indicated that it is qualified to acquire the line for trail use, and it issued a statement of its willingness to assume financial responsibility.

² Appended to the Taxman submission are signatures of 50 individuals also opposing trail use.

³ See Ex Parte No. 274 (Sub-No. 13B), Policy Statement on Rules to Trails Conversions (not printed), served February 5, 1990 (55 FR 4026-28).

ordinances, and public health and safety laws.⁴ The same is true for an existing right-of-way that the Commission has approved for abandonment. Because we lack enforcement authority over trails, property owners harmed by improperly maintained trails should take their complaints to local officials.

This proceeding is reopened, and the previously issued Certificate and Decision will be modified into a CITU under 49 CFR 1152.79(c). Negotiations for a trail use agreement may proceed during the 180-day period described below. As long as the final agreement is mutually agreeable to the parties involved, further Commission approval is not necessary. If no agreement is reached within 180 days from the service date of this decision and certificate, Conrail may then fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is certified: Conrail is authorized to abandon the line described above, subject to the terms and conditions for interim trail use/rail banking set forth below.

It is ordered:

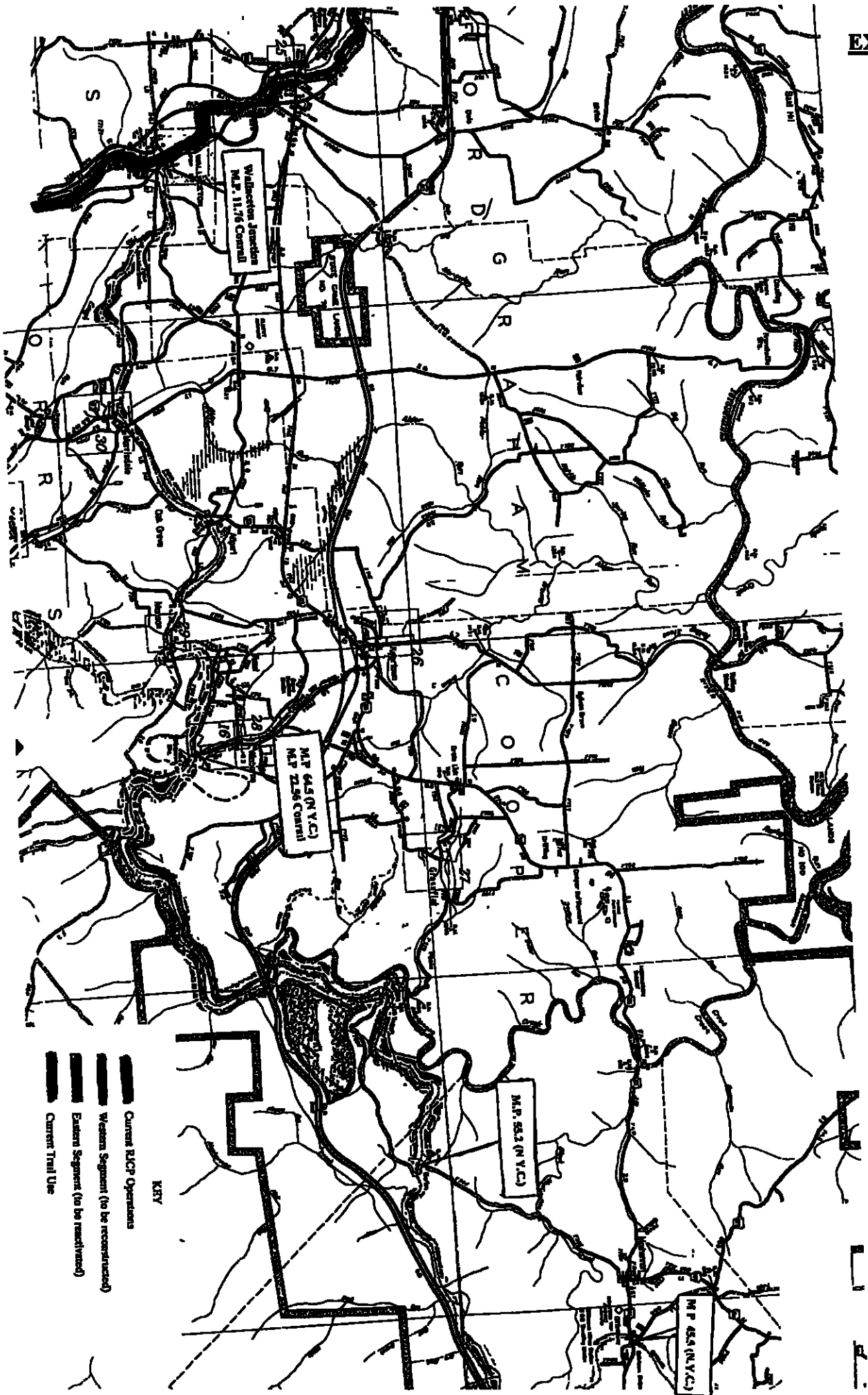
1. This proceeding is reopened.
2. The Certificate and Decision served February 15, 1990, is modified to authorize interim trail use/rail banking in accord with the terms and conditions set forth below.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and the payment of any taxes imposed on the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service.
5. If interim trail use is implemented and the user subsequently seeks to terminate trail use, it must file a petition to reopen, referring to this decision and CITU by date and docket number, and request that the CITU be vacated on a specific date.
6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and certificate, interim trail use may be implemented. If no agreement is reached by the 180th day, Conrail may fully abandon the line.
7. This decision is effective on its service date.

By the Commission, David M. Komschnik, Director, Office of Proceedings.

(SEAL)


Sidney L. Strickland, Jr.
Secretary

⁴ See Ex Parte No. 274 (Sub-No. 13), Rail Abandonment--Use of Rights-of-Way As Trails--Supplemental Trails Act Procedures (not printed), served May 26, 1989.



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May 19, 2008

Ms. Jodi Brennan, Secretary
Headwaters Charitable Trust
478 Jeffers Street
DuBois, PA 15801

Re: *Conrail Abandonment of the Snow Shoe Industrial
Track in Centre and Clearfield Counties, Pennsylvania*
Docket No. AB-167, (Sub-No. 1004N)

NOTICE OF PARTIAL REACTIVATION

Dear Ms. Brennan:

This letter constitutes notice that R.J. Corman Railroad Company/Pennsylvania Lines Inc. ("the Railroad") is reactivating a portion of the railroad right-of-way that was "railbanked" by agreement between the Headwaters Charitable Trust and Consolidated Rail Corporation pursuant to a Certificate of Interim Trail Use ("CITU") in the above-referenced proceeding. The portion of the right of way to be reactivated lies between Mile Post 64.5 near Winburne, PA and Mile Post 55.2, where the right of way meets Gorton Road. The eastern part of the Snow Shoe Trail from Gorton Road to Gillintown will not be affected.

The Railroad is acquiring the right under the National Trail Systems Act, 16 U.S.C. § 1247(d), to reinstitute rail service over that line, and it is filing with the U.S. Surface Transportation Board a Petition to Partially Vacate the Certificate of Interim Trail Use issued in the abandonment proceeding referenced above. A copy of that Petition is enclosed.

Please contact me to address any questions or concerns you have about the STB process or about arrangements for an orderly discontinuance of trail use on this western portion of the Snow Shoe Trail.

Very truly yours,



Ronald A. Lane, Esq.
Attorney for R.J. Corman Railroad Company/
Pennsylvania Lines Inc.

RAL:dg
Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2008, a copy of the foregoing
Petition to Partially Vacate Certificate of Interim Trail Use or Abandonment was served by
first class mail, postage prepaid, upon:

John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

Ms. Jodi Brennan
Secretary
Headwaters Charitable Trust
478 Jeffers Street
DuBois, PA 15801



Thomas J. Litwiler